UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NATIONAL RURAL LETTER CARRIERS, ASSOCIATION,	)	
Respondent,	)	**Case No. 15-CA-213552**
and	)	
AMANDA WILLIAMS,	)	
	)	**Date: October 9, 2018**
Individual Charging Party	)	

BRIEF OF INTERVENOR
UNITED STATED POSTAL SERVICE

INTRODUCTION AND SUMMARY

The claims here are unprecedented and present a case of first impression. Actually, the claims pressed by Counsel for the General Counsel are expressly contrary to decades of settled law as dictated by the U.S. Supreme Court. It appears that the effort to prosecute the union for not trying hard enough (acting "arbitrarily") is the product of a recent change in prosecutorial focus undertaken by the new administration.[1] Whether such focus is proper in some other case remains to be seen. What is clear now however is that zealous oversight, outside-management, and "second-guessing" of the union's efforts to negotiate grievance settlements is utterly contrary to the law itself which requires deference absent bad faith. Neither the law nor the facts support the claims made in this case by the NLRB.

Worse, however, is the impact these claims would have. The primary aim of the Act is to promote collective bargaining. GC's theory here would compromise collective

[1] See e.g., NLRB GC Memoranda 19-01.

bargaining, add uncertainty to any "deal" reached, and force this and other unions to fight each grievance through arbitration rather than settle claims by bargaining. This is anathema to the Act and to decades of law. It also does great damage to any employer that would opt for labor peace and certainty through negotiations rather than contesting every grievance through litigation. At least in this case, the administration's new policy "experiment" is hostile to both union and management and serves no valid purpose of the Act.[2]

What the complaint allegations attempt to do is provide a forum for employees to challenge simple contract violations, and allow the NLRB to become a guarantor of contractual rights and "fairness" in the workplace.[3] The Board would become a super-arbitrator and act as a court of final authority in adjudicating routine grievances. There is no such mandate or legal authority under the Act for this extreme aggrandizement of NLRB authority and oversight.

Ironically, GC's theories on behalf of Amanda Williams and Yiesha Porter suffer from the same conflicted dichotomy as the failures GC charges against the union. Essentially, GC claims that the union should have followed the contract explicitly and should have fought for a strict interpretation and application of its terms. Yet, GC also urges "fairness" rather than a strict interpretation of the CBA when that would provide a better result. This is precisely what GC faults the union for doing. GC cannot have it both ways: arguing for strict interpretation of the CBA on behalf of Amanda Williams, but arguing for contractual forbearance and leniency (fairness, despite the CBA) when

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[2] Given that it is also contrary to the Act and NLRB regulations, the new policy would more properly be pursued through rule-making, which could at least provide legal support and authorization. Otherwise, this new policy as applied is *ultra vires*.

[3] Here, the GC's theory is disparate treatment: that the Myaika Gross settlement had retroactive effect, and thus it is unfair that the Amanda Williams' settlement did not. It is absurd to argue that one grievance settlement creates a binding precedent for all future cases and provides a legal duty on the union that the NLRB can enforce. It is not within the NLRB's mandate to even attempt to guarantee what it considers to be "fairness." Yet that's what GC seeks here.

it comes to Yiesha Porter. It is not the GC's call to determine the outcomes in these cases at all, let alone do so in a hypocritical manner.

The Postal Service employs nearly 700,000 employees, a larger group than most large cities in the U.S. Naturally, given the sheer volume of employee transactions there are bound to be errors and mistakes, and employees will occasionally be short-changed. Errors happen. Through no fault of their own, Amanda Williams and Yiesha Porter were denied bids they perhaps should have had. The parties (union and management) fixed that. Both employees received proper bids/assignments. Ms. Williams continues to press her theoretical contractual entitlement despite being a supervisor ("204B") at all relevant times after the grievance settlement. Despite the similar genesis of their initial bid denials, their claims are quite different. In neither case, however, does the CBA address at all what the proper remedy should be for the earlier bid mistakes. Consequently, this is not a case about violating the CBA itself in terms of a fixed, guaranteed remedy. Remedy is purely a product of the parties' negotiations.

Even there, however, there are different tracks for Williams and Porter. Williams now demands "retroactive" treatment – despite that there is no such request in her grievance. In her grievance, Williams protested her bid and did not mention any kind of retroactivity. She received her bid, and thus her grievance was resolved in her favor, according to the contract terms regarding seniority bidding.

Yiesha Porter has suffered harm in a very different way. Here, however, she and the GC assert that she should be free of CBA constraints and have retroactivity ignored. When Porter received the wrong bid, it placed her into a regular carrier status that gave her contractual wages and benefits that she did not earn or deserve. Those

wages and benefits were more than she should have received. "Retroactivity" demanded that the excess income and the benefits be stopped and be taken back. This is not some arbitrary demand by management. Rather, it is the law under the Debt Collection Act of 1982.[4] Congress, not USPS determined that overpayments of wages, benefits, etc., must be retrieved from the employees through debt collection, known as a "Letter of demand." The parties were not free to ignore Congress' will. Nor is the NLRB. Yet, in a claim of fairness, the NLRB claims it is improper to seek retroactive effect for Porter, though it is required for Williams. GC is neither the employer nor the employee representative. It's lack of expertise (and consistency) in both areas compounds its improper intervention in these grievance resolutions.

Ms. Williams and Ms. Porter received their due. They received the bids the contract required. (Porter has now received more, as forgiveness of her debt.) To the extent they believed the contract was violated, this is not an unfair labor practice. Rather, it is a claim that would be brought in court as a contract enforcement claim, perhaps as a hybrid-Section 301 claim.[5] It is not an unfair labor practice for a union to settle a grievance, even if the employee might want more.

There was also nothing "arbitrary" about the union's settlement. Both union and management took the claims very seriously and negotiated at length up to the highest levels of their organizations. At the time of the charge, the parties were still negotiating, so the charge itself was premature. Ultimately, the parties reached an agreement that gave Ms. Williams the bid she wanted and provided a new permanent position to Ms. Porter. Williams had no contractual entitlement to any kind of

[4] See 5 USC 5514; 39 USC 204, 401, 39 CFR 961.4.

[5] In the case of USPS, the statutory authorization for lawsuits to enforce the contract are not Section 301, but 39 USC 1208.

retroactive bid treatment.[6] Porter, on the other hand, wanted to ignore any look back at what "would have been" or "should have been." It's easy to see why. Porter was wrongly placed in a permanent assignment and began receiving wages and benefits that she was not entitled to by erroneously becoming a permanent employee. (Rural carrier assistants (RCAs) do not receive such wages and benefits.) Thus, when the parties tried to make the employee "whole" – as in doing what was contractually (and legally) required and what *should* have happened previously – they were left having to move Porter back to an RCA status (with less wages and benefits). Porter was the least senior bidder, thus she had no entitlement to the bid she initially won. When the process was run again, properly, her juniority meant she could not keep the bid she had erroneously received. It also meant she had to return the excess wages and benefits. Porter then received a letter of demand. She was being asked to return what was improperly given. That's not unfair. It's the law.

However, Porter received something of value: a permanent position. USPS was not required to create a regular permanent position for her. Nonetheless it did so during the union negotiations. So there was indeed a "*quid pro quo*" in the global settlement. Williams and Porter both received appropriate bids. Williams did not get back pay, but Porter got a permanent job. That is what negotiations are all about: give and take. In bargaining parlance, this is referred to as horse-trading. Both sides gave up something in exchange for receiving something else they wanted. For Williams, she received a bid she wanted, despite being in management. There was no looking backwards money. For Porter, she wasn't returned to her RCA position, but received a

[6] Frankly, it is uncertain what is even meant by retroactivity in this situation as Williams could not go back in time and work a different route. Nor did she make a grievance demand for back pay.

new (better) bid and a permanent position (a substantial improvement over her entitlement had she received only what the CBA dictated).

For union and management, the deal meant not having to try to determine the "what ifs" that would be required in order to guess at "what might have been" had the seniority list error not occurred at all. The parties negotiated for certainty and to provide the contractually mandated bids based on proper seniority – while trying to do the least harm to others and cause as little disruption as possible.

It is important to understand that fixing a bid (even prospectively) creates a multiplying and cascading series of new problems that require resolution. Each bid (route assignment) is unique and moving someone into one bid means moving someone else out, and displacing that second person means find the proper place for him/her, resulting in displacing a third. This bumping process is extremely disruptive to any operation, especially when it requires employees to deliver new routes they are not familiar with. Trying to fix a bid retroactively is even more difficult, as it requires guessing and speculation about what other people might have done differently. It also creates a cascade of new grievances for anyone not satisfied with the new result. The initial Myaika Gross settlement proved that point well. It created a cascade of grievances when Gross bumped someone else. Other postings in the interim, delays in implementation, the faulty seniority list, Williams' non-bid were all contributing factors that pushed the parties to get the best deal they could while doing as little harm as possible. Full "make whole" (retroactive) was not feasible or even desirable. Trying to determine and then approximating what "would" have happened would have been futile, would have been messy, would have created new hardships and grievance disputes and would have served no contractually mandated purpose. Instead, the

parties fixed the contract violation and tried to do "justice" otherwise. A fight over retroactivity for Williams would have nullified the (non-retroactive) advantage given to Porter. Justice for all (as much as possible) was obtained by concessions from all.

Leaving it all to the uncertainties of an arbitrator would have made even less sense. That would mean rolling the dice for an unknown result. It would also take more time, money and effort. Arbitrators are not fools either. Most often when faced with difficult and nuanced remedial dilemmas, arbitrators send the case back to the parties and leave it to them to negotiate a resolution they can both live with, rather than imposing a winner-take-all result. So even if arbitration had been desirable, it is unlikely an arbitrator would have resolved the instant disputes to everyone's liking. Arbitration was not (and is not) an option.[7] In some sense, arbitration would have been an abdication of the parties' responsibilities to do the hard work of reaching a deal on their own.

But even if the union's decisions were less well-grounded, that is not a violation of the Act. Far more is needed to prove a breach of duty of fair representation claim. The Supreme Court has repeatedly stated that something like bad-faith or discriminatory animus is required to meet the burden. Here, no such allegations are made at all. Instead, contrary to the Court's mandate and NLRB precedent, GC is simply second-guessing the union's efforts and substituting its judgment for theirs.

THE MOST PERTINENT FACTS

Most of the salient facts in the case are undisputed. There is little or no

[7] Arbitration is still not an option. The grievances were settled. Any new grievance would be untimely, and USPS would not agree to waive timeliness or otherwise agree to disregard the settlements in question. Nor can the NLRB "take" these negotiated agreements away from the Postal Service without due process.

credibility issue as the actions and discussions took place internally within the union or between union and management. Many of the facts are set out in the stipulation (JX 11)[8] The essential facts are recounted only generally. The crucial facts in this case center on the union's intentions and its reasoning for settling the Yiesha Porter and Amanda Williams grievances as they did. These are the critical facts in exploring whether the settlements were "arbitrary."

Myaika Gross was denied a bid due to alleged failure to submit proper medical documentation. She grieved and her grievance was settled in her favor as she was allowed to bid And receive the route assignment she wanted. (JX2) The grievance settlement for Myaika Gross required that other employees be removed from their bid positions in order to accommodate M. Gross' received bid. (They were bumped.)

Amanda Williams filed a grievance as a result of being taken from her bid route. (JX4). Yiesha Porter also grieved her bumping from the earlier bid position when she was removed due to the M. Gross settlement. (JX5) Angela Porter grieved too. (JX6)

The seniority list initially used in the M. Gross settlement was incorrect. (JX3) It caused some employees to receive or be denied bids improperly. The flawed seniority list was discovered only late in the process after some of the bumping had taken place. The later seniority list provided the correct seniority ranking (JX7) and was used to resolve the grievances of Amanda Williams and Yiesha Porter.

Amanda Williams had initially been denied a preferred route due to the flawed seniority list. (JX4) She preferred and eventually received a route (bid) of her choice (Route 26). She also became a supervisor in December 2017 and was no longer

[8] Joint exhibits are shown as JX-#; GC exhibits as GCX and Union exhibits as RX; references to the transcript are shown as Tr.-pg.#)

delivering mail, despite continuing to press the grievance regarding her (moot) assignment dispute.

Yiesha Porter actually had the least seniority among the several bidders. (Tr. 367) At the time, she was a rural carrier associate, which is non-career position with lower pay and fewer benefits. (Tr. 201) Under the flawed seniority list she had erroneously high seniority and bid on and received a route to which she was not entitled. When her own grievance was settled using the correct seniority list, she had to give up her earlier bid. (JX5, 7, 8) The implementation of the proper seniority list and the proper bids for others with higher seniority meant that Y. Porter should have been the low bidder and should not have received the route that made her a career regular employee. As a result, her career status was rescinded and she was issued a letter of demand for the excess pay and benefits she had received erroneously. That rescission was only temporary, however, as the Postal Service agreed to create a new career position (part time flexible) "PTF" in order to provide career status going forward.[9] (Tr. 367-368, 379-380. **383-385**) Without the Postal Service creating the PTF position in settlement of the grievance, Y Porter would not have become a regular career employee (as a PTF).[10] She was thus able to become a career employee going forward, despite her relative juniority. The Postal Service could have exercised its discretion to continue without creating new PTF positions, keeping Y Porter as an RCA instead. But, Deb Williams prevailed upon management and obtained a settlement

[9] Formal pension rules do not permit a government employer to pretend an employee had a career position and accrue pension credits. By fixing the seniority list and having to give up the erroneously awarded bid (which falsely created career employment/pension benefits) the settlement (and the CBA) required Y. Porter to be reverted back to non-career, even if only temporarily until she was awarded a new career position simultaneously. This was unfortunate, but Y Porter would not have been a career employee earlier if the bids had been done properly from the start. The erroneously received bid gave Y Porter unfounded and erroneous expectations that were then terminated by the settlement (at least looking backwards)

[10] Arguably, this is the "*quid pro quo*" for the resolution of Williams and Porter grievances.

favorable to the union that required USPS to create the PTF position for Y. Porter. (Tr. 384-385; JX8)

The “cost” of fixing the initial bidding mishap (in the Myaika Gross settlement) was that Y. Porter was issued a demand letter for the wages and benefits she should not have received. The union grieved that action, and the demand letter has reportedly been rescinded.

The union considered how best to settle the Williams and Porter grievances and whether to seek complete relief such as (so-called) retroactivity that might approximate what would have happened had the bidding and seniority list been implemented properly from the start. (Tr. 212-216; 367-68, 378-382) Union director Joey Johnson testified that you can’t “unring” the bell sometimes and that there was no way to say exactly how the bidding would have taken place if done properly. Thus it would be guess work trying to figure out exactly who should have received which bids. (Tr. 212) There were multiple factors at work that prevented a clear picture of how things “should” have gone, including that there were multiple postings, several moves, and some employees (like Amanda Williams) didn’t bid at all because they were content with their then-assignments, there were delays in implementing the earlier settlement (which caused further impact and any new delays might create more difficulty), there were numerous grievances from the earlier settlements and similar grievances could be expected for any future settlement that displaced anyone. (Tr. 212, 213) “So you try to do the best you can . . with the least amount of impact on the office and the employees.” (Tr. 213)

Deb Williams testified similarly that she tried to reach an agreement that protected Yiesha Porter and also gave Amanda Williams the bid position she wanted.

(Tr. 368-69, 382) She dealt with Postal Service Labor Relations manager Cathy Perron who wanted a complete resolution of all of the claims. Deb Williams explained that there were possible vacancies but that there was no requirement for USPS to fill those vacancies or create new PTF positions. Nonetheless, she was able to convince USPS to create at least two PTF positions, once of which was then given to Y. Porter, thus allowing her to become a permanent regular employee (properly). (Tr. 379-385) There was nothing the union could do to prevent the issuance of the demand letter, which is done automatically.[11] Deb Williams' notes of the negotiations (RX9) contain her detailed considerations about the reasons for this overall settlement. In the notes, she lays out nearly all of the same considerations described by Joey Johnson. The notes and Deb Williams' testimony reveal thoughtful and reasonable considerations and do not remotely suggest her careful decisions were in any way "arbitrary."

ANALYSIS

It is unfortunate that Amanda Williams was too anxious to await the outcome of her grievance negotiations before filing the instant charge. She ended up getting the bid she wanted. It was also a moot issue by then as she was already a full time supervisor, a position she has held since. So the resolution of her grievance is insignificant as her pay is now fixed through other rules. But her charge set in motion a chain of events that the NLRB has utilized to claim some kind of union misconduct, even though the settlement was not final when the charge was filed and the outcome (as to Amanda Williams is mostly irrelevant). It also appears that when she weas told of the settlement she had a mistaken understanding of what it meant (that it would

[11] As required by the Debt Collection Act of 1982.

reduce her pay perhaps). The charge also gave Yiesha Porter a false sense of what she might expect to recover and that she had some kind of entitlement to a remedy well beyond the contract, and some type of shield against recovery of the debt she owed due to having received improper pay and benefits. These false expectations have been fanned by the Region, which seeks to substitute its own judgment about what a fair settlement would include for that of the union.

The initial bidding was flawed by two things: failure to allow Myaika Gross to bid and use of an erroneous seniority list. It was also compounded by the bid held in abeyance for Kayla Talbert, who was eventually removed (only later freeing up that held bid to be given to someone else). The M. Gross settlement fixed the first issue, but the second was only discovered later, after several employees had to be bumped into other positions. Once the correct seniority list was implemented, there were new challenges (mostly for Y. Porter). In addition, there was uncertainty about how to make things right, as there is no set of rules to govern bidding remedies, and no way of knowing some important variables such as whether Amanda Williams would have bid (when she declined) had she known her current assignment would be taken away. There was also the prospect that any attempt to create (or rather, demand) the perfect settlement would mean a new round of reshuffling and bumping and new grievances and more disruption. For example, if USPS had not agreed to create and offer the PTF position to Y. Porter, it is difficult to know exactly where she would have landed. After all, her seniority was near the bottom and she only became career by error. Fixing her situation “by the book” would have meant returning her to the non-career RCA position in a bid that someone else was already holding. That would have been “proper” but it also would have exacerbated her unhappiness – even though correct.

So Porter received the best outcome of a bad situation. She even came out ahead, having reached career status earlier than she would otherwise. While it is true that she was initially asked to return money (etc.) that did not properly belong to her, that retaking of the King's money by the King[12] was neither the union's doing, nor some arbitrary decision by Postal Service management. As a non-career government employee, for example, Ms. Porter could not legally keep pension credits that she did not properly accrue.

Yet, it is the GC who brings these claims. GC claims that some type of retroactivity was owed to Amanda Williams despite the silence of the CBA. GC then makes the opposite claim for Yiesha Porter, asserting that she should be protected from actually applying the CBA and the Debt Collection Act since that would be unfair and Porter would make out better if the CBA terms were ignored. So it is the NLRB that seeks to achieve its own assessment of fairness, despite the absence of any controlling CBA language, despite the requirements of the Debt Collection Act, and despite the good faith negotiations of both labor and management in an attempt to get the best possible settlement with the least harm to others. GC ignores the harm to others and seeks only to achieve what it thinks is a fair resolution. But, that is not the NLRB's statutory mandate.

At no time did the Union act "arbitrarily," nor did it simply drop or abandon the grievance filed by Charging Party or others. Rather, both the USPS and the Union were faced with grievances over a faulty seniority list used for several bidding rounds. Both parties negotiated at length and in good faith to reach a mutually agreeable outcome, based on the revised and

[12] It is the federal government's sovereignty and agreement to provide compensation, limited by its own dictate (expressed through Congress) that improper compensation received must be returned. This isn't about fairness to an employee. Rather, it is the will of "We, the People" acting through Congress. Ms. Porter's claim about the unfairness of having to repay monies wrongly received is utterly inappropriate here. She should take that matter up with Congress, not the NLRB.

corrected seniority list.

The CBA does not require any particular remedy in bidding disputes and back pay is not a required remedy to adjust a bidding error. The parties negotiated in good faith to reach as good a settlement as was possible under the circumstances.

Seniority, bidding and the cascading bumping that takes place make any retroactive remedy extremely difficult to apply. Yet, many months later when the parties attempted to put the proverbial egg back together, they had to take into account all kinds of contingencies that would be affected by seeking a perfect remedy for everyone. Such a remedy is impossible as even doing strictly what the contract required would mean some employees lost routes they preferred, lost regular carrier status or were required to give back money from benefits they had received improperly. So any remedy was likely to make someone unhappy. But the parties bargained strenuously to achieve the best possible resolution under very difficult circumstances.

This was not "arbitrary" conduct by the union or management in the least. As such, these negotiations are not subject to attack or second-guessing by the NLRB. Under ample Supreme Court precedents, the NLRB cannot prevail in this case based on the mere accusation of "arbitrary" action. Much more needs to be alleged and proven. For example, The Court requires that in order to prove a breach of the duty of fair representation the NLRB must produce "substantial evidence of discrimination that is intentional, severe and unrelated to legitimate union objectives." Street Elec. Ry. Motor Coach Employees v. Lockridge, 403 U.S. 274, 301 (1971); Hines v. Anchor Motor Freight, 424 U.S. 554, 570-71 (1976)(and more than mere error in judgment). More to the point in dealing with the settlement of grievances, the Court has stated that

union resolution of disputes can be found "arbitrary" "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness [citations omitted] as to be irrational." *Air Line Pilots Ass'n. v. O'Neill*, 499 U.S. 65 (1991). The Court went on to explain that it is not within the authority of the courts [or the Board] to attempt to evaluate the merits of a particular dispute and substitute its own view of a better settlement. The Court stated in blunt and clear terms the following admonition:

> Congress did not intend judicial review of a union's performance to permit the court to substitute its own view of the proper bargain for that reached by the union. Rather, Congress envisioned the relationship between the courts and labor unions as similar to that between the courts and the legislature. Any substantive examination of the union's performance, therefore, must be highly deferential. 499 U.S. at 78.

Mere negligence is not sufficient. Discrimination must be alleged and proven. Here, no such allegation is made. Nor does the NLRB even consider the negotiated settlements that are at the core of the Charging Party's concerns. Instead, the NLRB is merely substituting its judgment for that of the union in terms of what the settlement "should have been". That is not within the NLRB's authority to decide.

In point of fact, Charging Party won her grievance and received the proper seniority and the proper bid she was seeking. The union did not arbitrate her case because it achieved the proper resolution through negotiations. To the extent that Charging Party may have been seeking more than her proper seniority or more than the bid she wanted, such additional demands by Charging Party are not included within the terms of the CBA. She had no fixed entitlement to any other remedy and the union did not err by failing to press for more.

USPS also stood in the way and was determined to fix the seniority and bidding glitches, and we did so. It was not appropriate or even feasible to provide additional

relief (such as back pay), regardless of how much the Union may have pressed for more. The Union's hard bargaining and its actions resolved the grievances and its actions cannot be considered arbitrary in the least. Absent proof of active hostility or discrimination toward Charging Party, the NLRB's complaint allegations are simply unsupported by the law – even if true.

If the NLRB is permitted to challenge the validity of the grievance settlement(s) here, the proverbial floodgates will be opened to any and all employees who are dissatisfied with future grievance settlements entered into by the USPS and the NRLCA (or any other union). This would have a devastating impact on the ability of the USPS to achieve finality and resolve disputes raised in the grievance process. Our CBA requires both parties to settle grievances at the lowest level possible. That avoids needless duplication of grievance meetings and presentations and allows the parties to preserve scarce resources. Requiring the union to arbitrate any grievance where it didn't get absolutely everything it might achieve would repudiate the very bargaining process the Act is designed for and would create a constant war-footing. With 700,000 employees and a commensurate number of grievances annually, the parties would be in arbitration around the clock each and every day. And for what? So an arbitrator can dictate a solution in a vacuum or (more likely) simply remand the issue for the parties to work out among themselves?

The NLRB hasn't been given a seat at the table in union-management disputes. It is not the judge of what is good or fair. Nor is there any standard by which to judge what the NLRB considers to be "arbitrary" or insufficient. Fortunately, the Supreme Court has stepped into this vacuum and requires that the Board grant great deference to the union when it comes to good faith negotiations. The law, As defined by the

Court, is well established and makes it clear that this case is completely unauthorized, unwarranted, and frankly, unwise.

Here, there has been no allegation of self-dealing, or negligence, or malice/ill-will towards the grievants, no allegation of inappropriate motives, no fraud, no misconduct or anything approaching the high hurdle set by the Court in these kinds of cases. Rather, this is a perfect example of the "second-guessing" that the Court rejected. Some type of serious misconduct or fault must be alleged, yet none is even claimed, let alone proven by GC. With all due respect, the claims in this case seem to meet the textbook definition of frivolous. It is worth asking why the Region would pursue such a case given its past friendliness with the union(s) in general and its long-term promotion of collective bargaining in particular.[13]

It is also worth mentioning that any useful remedy against the Union would likely include some kind of retroactive amelioration of the alleged CBA breaches. This would mean undoing the settlements to which the USPS is a party, and somehow trying to achieve a different result - with the USPS. The Postal Service rejects any such remedy. We reached finality on several grievance settlements through good faith negotiations and binding commitments. We cannot allow those agreements to be snatched away from us by an apparently overzealous NLRB. Nor will we agree to give the union a "do-over" through a new (late) grievance. The Postal Service made commitments and gave the "*quid*" for the union's "*quo*." Having done so, we will not let the union or the NLRB come back to the well and try for more. Ask Ms. Porter whether

[13] It is no more difficult to imagine that the Region is now hostile to the union's efforts, than that it may actually be attempting to thwart the administration's new policy (stated in GC-Memo 19-01) by bringing a frivolous case in hopes it will provide a good precedent (when rejected) that actually aids the unions down the road. That is not an accusation. Rather, it is speculation about the motives of bringing a case so clearly beyond the NLRB's mandate and so clearly contrary to binding law. Maybe they were hoping to fail.

she would want to give up her permanent career position with their handsome benefits, in exchange for rolling the dice with an arbitrator. She would not start out where she is now and then simply hope to achieve more through a remedy. Rather, if the parties were forced to abandon the agreement they reached, that would mean stripping her of her permanent career position. If retroactivity were applied, then she would also face a new demand letter for monies and benefits that were not properly received.

This is not a threat. Management cannot go back in time and un-do the settlement. Nor is there any desire to do so. Rather, this is simply to point out that there are real-life consequences for the dangerous path that the NLRB seems to be embarking on. It is not just about getting more. Rather, as with reneging on any "deal" someone has to give up something they've already achieved. Both grievants achieved something they wanted. It is not up to the NLRB to claim they should have or might have gotten more. This is not just an academic exercise. What the Board wants would cause true and wide-spread disruption in the Postal Service, and for every other employer hoping to adjust grievances through negotiations rather than litigation.

CONCLUSION

For all the foregoing reasons, Intervenor/employer United Stated Postal Service respectfully requests that the complaint in this case be dismissed in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2018, I served the foregoing Brief upon the following individuals:

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